Office-Supreme Court, U.S.
FILED
DEC 4 1984
ALEXANDER L. STEVAS,
CLERK

No. 84-733 (2)

In The
Supreme Court of the United States
October Term, 1984

DAVID H. ROGERS,

Appellant,

vs.

STATE OF NORTH CAROLINA,

Appellee.

On Appeal From The Supreme Court of North Carolina

MOTION TO DISMISS APPEAL

RUFUS L. EDMISTEN
Attorney General

CHARLES HAMILTON HOBGOOD
Assistant Attorney General

North Carolina Department of Justice
Post Office Box 629
Raleigh, North Carolina 27602-0629
Telephone: (919) 733-2011

Attorneys for Appellee

COCKLE LAW BRIEF PRINTING CO., (800) 835-7427 Ext. 333

22 MP

QUESTIONS PRESENTED

I. DID THE STATE FAIL TO COMPLY WITH THE DISCOVERY AND DISCLOSURE REQUIREMENTS OF NORTH CAROLINA GENERAL STATUTE 15-A-901, *ET SEQ.*, AND VIOLATE THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT?

II. DID THE PROSECUTION OF THE APPELLANT ON A SUPERCEDING INDICTMENT THAT CONTAINED AN ADDITIONAL COUNT RAISE A PRESUMPTION OF VINDICTIVE PROSECUTION?

III. WAS THE APPELLANT SUBJECTED TO IMPERMISSIBLE SELECTIVE PROSECUTION?

IV. DID THE STATE FAIL TO FOLLOW THE NORTH CAROLINA PROCEDURAL REQUIREMENTS FOR THE OBTAINING OF A PRESENTMENT AND INDICTMENT?

V. IS THE NORTH CAROLINA PRESENTMENT PROCEDURE UNCONSTITUTIONAL?

VI. DID THE SUSPENSION OF THE APPELLANT'S LAW LICENSE IMPOSED BY THE TRIAL JUDGE IN A CIVIL ORDER CONSTITUTE CRUEL AND UNUSUAL PUNISHMENT AND VIOLATE DUE PROCESS?

PARTIES

In the North Carolina Supreme Court and the North Carolina Court of Appeals, the parties were: David H. Rogers, Defendant-Appellant, and the State of North Carolina, Appellee.

TABLE OF CONTENTS

	Pages
QUESTIONS PRESENTED	i
PARTIES	ii
TABLE OF AUTHORITIES	iii
OPINION BELOW	2
JURISDICTION	2
STATEMENT OF THE CASE	2
REASONS WHY THE APPEAL SHOULD BE DISMISSED	10
CONCLUSION	17

TABLE OF AUTHORITIES

CASES

State v. Anderson, 57 N.C. App. 602, 292 S.E.2d 163, *cert. denied*, 306 N.C. 559 (1982)	13
State v. Peters, 390 Or. App. 109, 591 P. 2d 761 (1979)	13
State v. Rogers, 68 N.C. App. 358, 315 S.E. 2d 492 (1984), *cert. denied*, — N.C. —, 319 S.E. 2d 284 (1984)	2, 10, 13, 14, 17
United States v. Augenblick, 393 U.S. 348, 89 S.Ct. 528, 21 L.Ed. 2d 537 (1969)	13
United States v. Banks, 682 F. 2d 841 (9th Cir. 1982)	13
United States v. Brooklier, 685 F. 2d 1208 (9th Cir. 1982)	14
United States v. Bryant, 448 F. 2d 1182, D.C. Cir. (1971)	13
United States v. Erne, 576 F. 2d 212 (9th Cir. 1978)	15

TABLE OF AUTHORITIES CITED—Continued

	Pages
United States v. Gervasi, 562 F. Supp. 632 (1983)	15
United States v. Goodwin, 457 U.S. 368, 102 S.Ct. 2485, 73 L.Ed. 2d 74 (1982)	14
United States v. Greene, 698 F. 2d 1364 (9th Cir. 1983)	15
United States v. Hinton, 307 F. 2d 672 (2nd Cir. 1983)	14
United States v. Kuykendall, 633 F. 2d 118 (8th Cir. 1980)	13
United States v. Miranne, 688 F. 2d 980 (5th Cir. 1982)	13
United States v. Wyate, 610 F. 2d 1385 (9th Cir. 1983)	15

STATUTES PRESENTED

N.C.G.S. 15A-541	9
N.C.G.S. 15A-901	10
28 U.S.C. § 1257(2)	2
28 U.S.C. § 1257(3)	2

MISCELLANEOUS

Rules 33 and 42, North Carolina Supreme Court	1
16 Am. Jur. 2d, *Constitutional Law* § 814	16

CONSTITUTIONAL PROVISIONS

United States Constitution, Fourteenth Amendment	16

No. 84-733

In The
Supreme Court of the United States
October Term, 1984

DAVID H. ROGERS,

Appellant,

vs.

STATE OF NORTH CAROLINA,

Appellee.

On Appeal From The
Supreme Court of North Carolina

MOTION TO DISMISS APPEAL

Pursuant to the authority of Rule 16 and in the manner provided by Rules 33 and 42 of the Rules of the Supreme Court, the State of North Carolina moves to dismiss the appeal of David H. Rogers and further requests that the appellant's alternative petition for Writ of Certiorari be denied on the basis of the facts and authorities hereinafter set forth for the court's consideration.

OPINION BELOW

The opinion of the North Carolina Court of Appeals in this case is reported in *State v. Rogers,* 68 N.C. App. 358, 315 S.E.2d 492 (1984), *cert. denied,* — N.C. —, 319 S.E.2d 284 (1984).

JURISDICTION

The jurisdiction of this court has been invoked pursuant to 28 U.S.C. § 1257(2), and in the alternative pursuant to 28 U.S.C. § 1257(3).

STATEMENT OF THE CASE

The appellant, David H. Rogers, was an attorney licensed to practice law in North Carolina. (T.21). Between 2:00 and 2:30 a.m. on July 7, 1982, he was in the Wake County Magistrate's Office. (T.24). The magistrate on duty was Jerry Ray. (T.23). Mr. Ray had seen Attorney Rogers at the back of the courthouse late at night on other occasions. (T.390).

Earlier that same night a young lady named Paula Ann Gately had gone to Darryl's Restaurant on Glenwood Avenue in Raleigh. (T.1G). She drank alcoholic beverages. (T.2G). She became very intoxicated. (T.45). She remembered leaving the restaurant and pulling out into Glenwood Avenue, but her memory became vague at that point. (T.26).

At the same time that Gately pulled out into Glenwood Avenue, a man named Bobby McMillian was driving on Glenwood Avenue near Darryl's Restaurant. Gately

drove through a flashing red light and pulled out in front of McMillian. The lights on her car were off. (T97-98). McMillian put on brakes, skidded, and the two cars hit. (T.98; 6 MA). Gately drove away. McMillian drove after her. Gately tried to drive over a concrete median. (T. 99). Her car cut off. McMillian ran up and asked her if she knew that she had been in an accident. Gately said that all she wanted to do was to go home. She started her car and drove off. (T.100).

McMillian went to the Fast Fare and telephoned the police. (T.102). Officer Mizellee of the Raleigh Police Department was called to investigate the accident. He arrived at Crabtree Valley at 12:57 a.m. and talked with McMillian about the accident. (T.41). McMillian described the accident, but he did not know the names of the streets that intersected with Glenwood Avenue. (T.93).

Meanwhile, Gately and her parked car were found at York Elementary School. When Officer Mizelle arrived, Gately was out of her car and her car's motor was not running. He did not see her driving. (T.43-44).

Officer Mizelle placed Gately under arrest and took her to the magistrate's office. (T.45). When he brought Gately in, Magistrate Ray and Attorney Rogers were in the magistrate's office. (T.24). Magistrate Ray charged Gately with driving under the influence and with hit and run and placed her under a $100.00 secured bond. (T.25).

Attorney Rogers, who had been listening, told Magistrate Ray that he wanted to post Gately's bond. Magistrate Ray informed him that "the statute, 85C-22 states that attorneys are not allowed to sign bail bonds for defendants." Attorney Fogers said he was going to post

her bond, and he left to get the bond money. (T.26). When he returned, Magistrate Ray again informed him of the statute. Magistrate Ray had taken out the North Carolina General Statute book in order to show the statute to Attorney Rogers. (T.27). Attorney Rogers said that he was aware of the statute. (T.391). He did not read the statute then or later. (T.392). He paid the $100.00 and signed the bond as surety. (T.27-30). He was not related to Gately. (T.5G).

Attorney Rogers and Gately left together. (T.30). He drove her home. In his car he gave Gately his business card. She gave him her court papers. (T.7G). At that time she considered him to be her attorney, and he considered himself to be her attorney. (T.9G; 10-11GA; 2MU).

The next day Gately telephoned McMillian. (T.103). She told him that she would pay for his damages and send him a check for $150.00 and pay the hospital bill. He told her that her leaving the accident was dangerous because he carried a gun. She was surprised to hear this. (T. 104). She did not remember him pointing a gun at her. (T.2-3G). He had had a gun with him when he approached her the night of the accident, but he had left it in the holster and had not pointed it at her. (T.101).

Gately sent McMillian a check. (T.9G). One or two days later she telephoned her attorney, Rogers, to let him know what she had done. Attorney Rogers advised her to stop payment. (T.10G; 248). As a result of his advice, she stopped payment. (T.11GA). McMillian received the check but could not cash it because payment had been stopped. (T.104).

Before Gately's cases came on for trial, Attorney Rogers went to the Wake County Clerk's Office and talked with the Clerk's Administrative Assistant, Barbara Mobley, about getting off Gately's bond. Mobley asked Attorney Rogers, "you're not going to represent her, are you? And he said, no, no. I just I did it for a friend . . . . . he was not going to represent her." (T.124-127). In response to their conversation, Mobley received a letter from Attorney Rogers dated August 17, 1982, in which he referred to Gately as "a friend." (T.126).

On August 19, 1982 Gately's cases were scheduled for trial in Wake County District Court. She went to court with Attorney Rogers because he was her attorney. (T. 14G). Officer Mizelle was present. (T.51). The judge presiding was Narley Cashwell. (T.160). The Assistant District Attorney was Mary Dombalis. She was the only District Attorney in the courtroom. (T.135). McMillian was subpoenaed to appear as a witness for the State, but he was late in arriving. (T. 106; 1M; 8Z).

When Officer Mizelle arrived in court, he saw Attorney Rogers in the courtroom. (T.54). Attorney Rogers approached Officer Mizelle and said that he wanted to talk about Gately's cases. He asked Officer Mizelle if Mizelle had seen McMillian in the courtroom. Officer Mizelle said that he had not seen McMillian. Attorney Rogers said, ". . . if he doesn't show up, we'll have the case dismissed . . ." (T.55).

At 9:00 a.m. the Assistant District Attorney called the calendar. (T.135). When she called Gately's cases, Attorney Rogers stood up and said that he represented Gately and that the plea was not guilty. (T.136). He did not ask

that Gately's cases be left open. (T.143). A few minutes later the Assistant District Attorney asked Attorney Rogers what he wanted to do with Gately's cases. Attorney Rogers "indicated to me at the time that my witness was not there and if the witness did not show up I'd have to dismiss the case. (T.137).

The Assistant District Attorney called out McMillian's name. No one answered. She took the case file to the witness coordinator, Charles Caldwell, for Caldwell to locate the witness. (T.137-138). McMillian came in around 10:00 a.m. The witness coordinator told him to go to the courtroom. (T.131). The witness coordinator sent a slip to the Assistant District Attorney telling her that the witness had arrived. She called out McMillian's name. He answered. (T.138). When he answered, Attorney Rogers muttered "shit" and motioned for Gately to meet him in the attorneys' conference room. (T.64).

Judge Cashwell noticed Attorney Rogers moving in and out of the conference room, which was becoming distracting. (T.162). Attorney Rogers approached Officer Mizelle several times to talk about Gately's cases. (T.62).

Attorney Rogers asked Officer Mizelle to come into the attorneys' conference room. Present at this conference were Attorney Rogers, McMillian, Gately, and Officer Mizelle, but not the Assistant District Attorney. (T. 66). Attorney Rogers discussed the accident with McMillian. He offered to have Gately pay McMillian's damages. He told McMillian that they could bring a charge against him for assault by pointing a gun. (T.108). He said that McMillian was the only one who had seen Gately driving and that he would have a good chance of getting

Gately's cases thrown out if McMillian was not a witness. (T.109). Attorney Rogers expected a dismissal of both the hit and run and the driving under the influence charges. (T.280). He and McMillian agreed that if McMillian did not press charges and did not appear as a witness, his damages would be paid. (T.67; 109; 14G; 3-6MU). Attorney Rogers told McMillian to hit the door, to go. (T.110). On the way out, Attorney Rogers told Officer Mizelle that McMillian was just a dumb nigger looking for a way to get money. (T.69).

McMillian left, went downstairs, had second thoughts, and went to see the witness coordinator. (T.111). He told the witness coordinator that the attorney had told him to leave. (T.133). The witness coordinator told McMillian to go back in the courtroom and wait for the case to be called. (T.112; 134). McMillian went back into the courtroom and satdown. (T.113). The witness coordinator told the Assistant District Attorney what McMillian had told him. (T.134).

The Assistant District Attorney was informed that there had been a conference in which it was agreed that if McMillian's damages were paid, he would not testify and the charges would be dropped. (T.139). She was shocked because she had not had an opportunity to speak with the witness, because she had not been present at the conference, and because the defense attorney had dismissed the State's witness. (T.140; 152). She asked Judge Cashwell to continue Gately's cases. (T.141). This was about 12:30 or 1:00 p.m. (T.212). Attorney Rogers had not spoken to her about Gately's cases since calendar call, although he had had the opportunity to do so. (T.142; 159).

When the Assistant District Attorney asked for a continuance, Attorney Rogers "stood up and very beligerently said, we're ready for trial. We have been here all morning and we're ready for this case to be tried." (T. 155-156; 162-163). Judge Cashwell asked Attorney Rogers if he excused the State's witness. Attorney Rogers did not reply but began to discuss the case. Judge Cashwell again asked him if he excused the State's witness. Again he began to talk about the merits of the case. Judge Cashwell stopped him and again asked him if he excused the State's witness. (T.164). He then admitted that he had told the witness to leave. (T.156, 171).

That day or the next day Attorney Rogers contacted Gately and advised her to take out a warrant against McMillian for assault by pointing a gun. (T.15G). Gately had told him that she did not remember the incident. (T. 3G). He then went with her to the magistrate's office. A warrant was taken out against McMillian. (T.16G). Attorney Rogers listed his own name as a witness on the warrant. (State's Exhibit 9). McMillian was charged, taken to the police station, fingerprinted, and photographed. (T.114).

A week later Gately went back to the magistrate's office and tried to drop the charge against McMillian because she did not think it was right, because she thought it was vindictive, and because she did not actually remember the event occurring and did not want to get involved in a case about which she was ignorant. (T.16, 18-20G).

Attorney Rogers was indicted on October 25, 1982, after the Wake County Grand Jury returned a presentment. The three count indictment charged (1) becoming

a surety on a bail bond in violation of G.S. 15-A-541, (2) improperly soliciting legal business, and (3) interfering with and intimidating a witness. On February 14, 1983 the appellant's pre-trial Motion To Dismiss count three for failure to state an offense was granted.

On February 15, 1983 the State obtained a superseding indictment and voluntarily dismissed the first indictment. In the superseding indictment, counts one and two were re-worded but remained essentially the same, and count three was broken down into two counts; new count three charging intimidating a witness and new count four charging attempting to interfere with a witness.

The appellant was tried with his consent at the February 15, 1983 Criminal Session of Wake County Superior Court. The jury returned a verdict of guilty as to count one, becoming a surety on a bail bond in violation of G.S. 15A-541, and as to count four, attempting to interfere with a witness, and a verdict of not guilty as to count two, improperly soliciting legal business, and as to count three, intimidating a witness. The appellant was given a suspended sentence on each count to run consecutively and was placed on unsupervised probation. As a condition of probation, the appellant was required to surrender his law license and not practice law for eighteen months, which period could be reduced to six months if he satisfies the North Carolina State Bar with regard to his moral qualifications and competency. In addition, pursuant to the court's summary jurisdiction to discipline attorneys, the trial judge entered a Civil Order imposing the identical discipline upon the appellant as that imposed in the probationary judgment.

REASONS WHY THE APPEAL SHOULD BE DISMISSED

I. The State Did Not Fail To Comply With The Discovery And Disclosure Requirements Of General Statute 15-A-901, Et Seq., Or Violate The Due Process Clause Of The Fourteenth Amendment.

The appellant contends that the inability of the State to produce an original tape recording violated due process. As noted by the North Carolina Court of Appeals, this argument is without merit. *State v. Rogers,* 68 N.C. App. at 391, 315 S.E.2d at 514. The pertinent facts are as follows:

On September 20, 1982 Detective A. C. Munday interviewed the appellant in the appellant's law office. (T.1 MU). Detective Munday made a tape recording of this interview. He took the tape to his office, and it was transcribed verbatim. (T.26, Motions Hearings).

There is no evidence that the appellant, who was an attorney, requested that the original tape recording of his interview be preserved.

After the tape recording was transcribed, Detective Munday used the tape, which was in a small dictating unit, to take statements from other people in this and other cases. The recording of his interview with the appellant was dictated over and thereby erased. (T.26, Motions Hearing).

On November 4, 1982 the appellant filed a Request for Voluntary Discovery. (R.17). On November 12, 1982 the

State voluntarily complied with discovery and provided the appellant with a copy of the transcript of the appellant's interview. (R.19). The appellant eventually withdrew his motion to compel discovery because the State had complied with his request. (T3, Motions Hearing).

On December 3, 1982, the appellant filed a motion to inspect and copy the original tape recording of all interviews made by Detective Munday. (R.27). On December 30, 1982 the State informed the appellant that the recordings had been made on the same small dictating unit, which is used repeatedly by the Raleigh Police Department, and that the recordings had been dictated over or erased and were no longer available. (R.22).

At pre-trial hearings held on January 5, 1983 Judge Britt denied the appellant's motion to produce the tape recordings. (R.28). The appellant did not request an evidentiary hearing. (T.22-32, Motions Hearing).

At the trial the State did not introduce during its case in chief evidence of the appellant's statement or of any tape recordings or transcripts. After the State rested, the appellant took the stand and testified. During cross examination, the appellant, in answers that were not responsive to the questions asked, voluntarily informed the jury that a tape recording and a transcript had been made of his statement. (T.357). The State did not question the appellant about the transcript until after the appellant had himself put the issue to the jury.

At the close of the appellant's evidence, the State called Detective Munday as a rebuttal witness. Detective Munday testified from his present recollection as to the statements made by the appellant to him. (T.2 MU). The

State did not introduce evidence on direct examination of Detective Munday regarding the transcript or recording.

The appellant brought out on cross examination that Detective Munday had recorded his interview of the appellant. (T.6 MU). The appellant vigorously cross examined Detective Munday and attempted to show that the transcript of appellant's statement differed from Detective Munday's present recollection of the appellant's statement. A comparison of the two, however, reveal no serious discrepancies. (T2-10 MU; R.38). Detective Munday testified that the transcript was an accurate rendition of the appellant's words. (T10-11 MU).

The appellant's contention that the inability of the State to produce the original tape recording violated due process is without merit for several reasons. First, Detective Munday acted in good faith in erasing the tape inasmuch as the tape was preserved by way of an accurate transcript. Second, the erased tape was not important to the defense. The transcript was not introduced into evidence by the State. The appellant did not object to or move to suppress Detective Munday's testimony regarding his present recollection of the statements the appellant made to him. Detective Munday was thoroughly cross examined. The appellant made generalized accusations that the tape contained inaccuracies but not once did he point to a specific inaccuracy. His claims of inaccuracies are unsupported. In fact, the appellant used the loss of the tape to his advantage. In an answer not responsive to the question asked, the appellant informed the jury that he believed that a playing of the tape would reveal errors in the transcript. He volunteered this to the jury at a time when he well knew that the tape had been erased

and that the State was helpless to rebut his allegations. Third, the appellant's guilt was established by the testimony of other witnesses and by the appellant's own testimony.

Because the detective acted in good faith and because the original tape was not important to the defense, the appellant has neither shown a violation of due process or prejudice. *State v. Anderson,* 57 N.C. App. 602, 292 S.E.2d 163, *cert. denied,* 306 N.C. 559 (1982); *United States v. Augenblick,* 393 U.S. 348, 89 S.Ct. 528, 21 L.Ed. 2d 537 (1969); *United States v. Bryant,* 448 F.2d 1182, D.C. Cir. (1971); *United States v. Miranne,* 688 F.2d 980 (5th Cir. 1982); *State v. Peters,* 390 Or.App. 109, 591 P.2d 761 (1979); *United States v. Kuykendall,* 633 F.2d 118 (8th Cir. 1980).

II. The Prosecution Of The Appellant On A Superseding Indictment That Contained An Additional Count Did Not Raise A Presumption Of Vindictive Prosecution.

The North Carolina Court of Appeals correctly held that the appellant was not entitled to a presumption of vindictive prosecution merely because the State obtained a new and more perfect indictment after part of the original indictment had been quashed as a result of the appellant's Motion to Dismiss the original indictment. *State v. Rogers,* 68 N.C. App. at 377-383, 315 S.E.2d 506-510.

A case on point is *United States v. Banks,* 682 F.2d 841 (9th Cir. 1982). There the defendant was indicted in a five count indictment. The indictment was dismissed. The prosecutor obtained a new indictment re-charging the defendant but adding one new count. The 9th Circuit

Court of Appeals, relying on *United States v. Goodwin,* 457 U.S. 368, 102 S.Ct. 2485, 73 L.Ed.2d 74 (1982), held that a presumption of prosecutorial vindictiveness does not arise in this type of pre-trial setting.

Other cases holding that adding counts to an indictment does not raise a presumption of vindictiveness include *United States v. Brooklier,* 685 F.2d 1208 (9th Cir. 1982) and *United States v. Hinton,* 307 F.2d 672 (2nd Cir. 1983).

Based on the facts and the above authority, this argument is without merit.

III. The Appellant Was Not Subjected To Impermissible Selective Prosecution.

The appellant argues that he was subjected to impermissible selective prosecution. After a thorough discussion of this question, the North Carolina Court of Appeals held that, even considering the appellant's proffer of proof as evidence, the appellant failed to make even a prima facie showing that he has been singled out for prosecution or that his prosecution resulted from impermissible considerations. *State v. Rogers,* 68 N.C. App. at 366-377, 315 S.E.2d at 500-506.

The opinion of the North Carolina Court of Appeals so thoroughly discusses and disposes of this argument that further discussion would merely be repetitious; therefore, the State relies upon the opinion of the North Carolina Court of Appeals. The State would briefly note that the facts show that the appellant was not singled out for prosecution and that he was not prosecuted as the result of impermissible considerations. Further, the prosecu-

tion of his case was referred to and handled by the North Carolina Attorney General's Office. Thus any possible impermissible considerations on the part of the Wake County District Attorney's office were insulated by an independent review by a separate state department. *United States v. Erne,* 576 F.2d 212 (9th Cir. 1978); *United States v. Greene,* 698 F.2d 1364 (9th Cir. 1983); and *United States v. Gervasi,* 562 F.Supp. 632 (1983).

United States v. Wayte, 610 F.2d 1385 (9th Cir. 1983) cited by the appellant, deals with draft resisters and is so factually distinguishable that it is irrelevant to the present case.

This argument is without merit.

IV. The State Did Not Fail To Follow The North Carolina Procedural Requirements For The Obtaining Of A Presentment And Indictment.

This argument as well as Argument V were considered by the North Carolina Court of Appeals, which held that they are "wholly without merit." *State v. Rogers,* 68 N.C. App. at 370, n.3, 315 S.E.2d at 502, n.3. Under North Carolina law, a prosecutor has the option of initiating a misdemeanor charge in Superior Court by requesting that the Grand Jury consider a presentment, and if the Grand Jury finds probable cause, then the prosecutor may proceed with an indictment. As noted by the North Carolina Court of Appeals, the correct procedure was followed in the present case. The appellant has not shown that this procedure violates due process. He was prosecuted on an indictment returned by a Grand Jury, was afforded a jury trial, and was otherwise afforded full due process.

Further:

> "The guarantee of due process, viewed in its procedural aspect, requires no particular form of procedure. The due process clause of the Fourteenth Amendment to the Constitution of the United States does not control mere forms of procedure in State courts or regulate practice therein."

16A Am. Jur. 2d *Constitutional Law*, § 814.

The appellant has not shown that the North Carolina presentment and indictment procedure was not followed or that the procedure violates due process.

V. The North Carolina Presentment Procedure Is Not Unconstitutional.

The appellant argues that the North Carolina presentment and indictment procedure is unconstitutionally vague. As noted in Argument IV, the North Carolina presentment and indictment procedure was correctly followed by the State in this case. The appellant has failed to show how this procedure is vague or how any alleged vaguenesses injured him. He was tried on an indictment returned by a Grand Jury, was afforded a jury trial, and was given full due process. This argument is without merit.

VI. The Suspension Of The Appellant's Law License Imposed By The Trial Court In A Civil Order Did Not Constitute Cruel And Unusual Punishment Or Violate Due Process.

After the appellant's conviction of two misdemeanors, the trial judge gave the appellant a suspended sentence with probation. The conditions of probation included the suspension of the appellant's law license for eighteen months. After imposing the criminal sentence,

the trial judge then proceeded to impose a civil disciplinary order that imposed the identical discipline as that set forth in the criminal probationary judgment. The appellant argues that the trial judge violated his rights to due process in imposing the civil order.

This question is moot. As noted by the North Carolina Court of Appeals, "inasmuch as we find no abuse of discretion in the probationary judgment imposed for defendant's criminal violations, we deem it unnecessary to address the issues directed toward the identical terms of the court's civil disciplinary order." *State v. Rogers,* 68 N.C. App. at 390-391, 315 S.E.2d at 514.

———o———

CONCLUSION

The appellant's appeal should be dismissed on the ground that, based on the facts of the present case, it does not present a substantial federal question. Further, for the foregoing reasons, the State of North Carolina submits that the appellant's alternative petition for a Writ of Certiorari should be denied.

Respectfully submitted,

RUFUS L. EDMISTEN
Attorney General

/s/ CHARLES H. HOBGOOD
Charles Hamilton Hobgood

Assistant Attorney General
Attorneys for Appellee
N.C. Department of Justice
P.O. Box 629
Raleigh, NC 27602
Telephone: (919) 733-2011